

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
In the Matter of	)	
MARITEL, INC.	)	WT Docket No. 04-257
and	)	RM-10743
MOBEX NETWORK SERVICES, LLC.	)	
Petitions for Rule Making to Amend the	)	<i>Report and Order</i> , 22 FCC Rcd 8971
Commission's Rules to Provide Additional	)	(Commission 2007) (the "R&O")
Flexibility for AMTS and VHF Public Coast	)	
Station Licensees	)	
To: Office of the Secretary		
Attn: Wireless Telecommunications Bureau		

"2011 Petition"  
Application for Review  
or in the Alternative Section 1.41 Request

"Petitioners," the undersigned, petition to dismiss or deny, submit this Application for review of the Order on Reconsideration in the above captioned R&O matter, FCC 11-23, Released March 3, 2011 (the "2011 Order") (the "App Review") which responded to a request for reconsideration by some of the Petitioners (the "2010 Petition").

To the extent any of the facts and law submitted herein are new, that should be found proper based on the 2010 Order, which was by the Commission and not the Wireless Bureau, indicating that the Commission at times responds to a petition for reconsideration which asserts relevant on new facts. However, said 2010 Order involved a petition for reconsideration not an application for review.

The 2010 Recon Order upheld a 2007 MO&O, FCC 10-6 (the "2007 Order") which responded, inter alia, to a request for reconsideration by some of the Petitioners (the "2007 Petition") which herein also means their previous pleadings on the topic in the 2007 Petition).

Herein, the "Orders" means the R&O, 2007 Order and 2011 Order.

### 1. Relief Requested

This App Review seeks that the FCC<sup>1</sup> reverse the parts of the R&O (including the parts of the rules based thereupon), and the 2007 and 2011 Orders that upheld those parts, that provide to site-based AMTS stations (herein meaning said stations operated by the licensees of the stations) any flexibility to provide service other than the common carrier radio service they allegedly were providing, and certified repeatedly to the FCC and competitors they were providing at all of their stations, at the time of the freeze on site-based AMTS licensing (the “Incumbent Certified Service” or “ICS”).

Petitioners, however, assert that FCC has effectively suspended the rights of parties, including Petitioners, to seek this relief for reasons given below, and based on that, allege that the time to submit this or another petition for reconsideration (to the Commission or Bureau) is tolled. See section below on this topic.

Alternatively, if the FCC does not grant the above request for relief, then (without waiving their right to appeal that denial), Petitioners request that the FCC prohibit the site-based AMTS licensees, Maritime Communications/ Land Mobile LLC (“MCLM”) and Paging Systems Inc. (“PSI”) from offering service other than ICS unless they demonstrate, and certify under penalty of perjury, that they timely constructed and maintained with no permanent discontinuance all of their alleged-valid site-based AMTS stations that in fact provided ICS. This should be subject to audit standards as an independent auditor would use including proof of site leases, equipment purchases and installation and operation logs, names of primary customers, proof of

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<sup>1</sup> To the degree some of the relief requested is deemed beyond what was requested in the 2007 and 2010 Petitions, that is permissible under applicable law, including as found by the DC Circuit Court of Appeals and as argued by the FCC in that court on several cases involving Petitioners who had pending before the FCC some issues in a FCC Order but at the same time appealed other issues from said Order to the Court. The Court ruled based on FCC arguments that a challenge before the FCC of any part of an Order reserves, for the challenger, the right to challenge on appeal any other part of the subject Order.

interconnection, proof of using FCC type-approved equipment for AMTS, etc.

The 2010 Recon Order, and earlier decisions it upheld, should be reversed and the action requested by Petitioners stated below should be granted for the following reasons, discussed herein (and considering with the text herein, the Referenced Materials (defined below): The actions taken in the 2010 and 2007 Orders, and in the relevant parts of the R&O noted above, (1) were in conflict with statute, regulation, case precedent, or established Commission policy; (2) and/or involves application of a precedent or policy which should be overturned or revised; (3) and are based upon erroneous finding as to an important or material question of fact; and (4) are based upon prejudicial procedural error.

## 2. Reference and incorporation

Petitioners reference and incorporate herein all of their pleadings submitted in the above captioned docket that were submitted for consideration resulting in the Orders, and for reasons noted below all their pleadings filed on the licenses of MCLM and PSI as to the invalidity of their site-based AMTS licenses and stations (the “Referenced Materials”).

This reference and incorporation is efficient and also is soundly within common FCC and court practice and precedent (including reference and incorporation practice used by the Commission and Bureau itself). See, e.g., *In re: Entercom Portland License, LLC, DA 08-495*, Rel. March 4, 2008; *In the Matter of Communications TeleSystems International Application...MO&O, DA 96-2183*, 11 FCC Rcd 17471; 1996 FCC LEXIS 7206, Rel. Dec. 31, 1996; *Artis v Bernake*, 630 F.3d 1031; 2011 U.S. App. LEXIS 519; 111 Fair Empl. Prac. Cas. (BNA) 300; 94 Empl. Prac. Dec. (CCH) P44,078, Decided January 11, 2011.

## 3. The 2010 and 2007 Orders Errors, and Related

The 2010 and 2007 Order erred in finding that the 2010 and 207 Petitions did not challenge the MCLM and PSI site based AMTS licenses and stations validity, but challenged other

licenses. See 2011 Order footnote 10 and related text (“... proceedings pertaining to those licenses”). A reading of these Petitions showed that (among other things) they challenged these licenses and stations validity directly (as lacking required coverage, etc.) and indirectly (as being subject to licensee disqualification for lack of character and fitness). Accordingly, on this basis alone, this App Rev should be processed and granted, for the reasons given in the 2007 and 2010 Petitions, restated here. There are no valid site-based AMTS licenses including since the auto terminated for lack of timely construction, lack of coverage, permanent discontinuance, licensee character disqualification and other reasons shown in (i) Petitioners’ pleadings filed under those licenses, and the rest of the Referenced Materials, and (ii) the current ongoing FCC Enforcement Bureau investigation of MCLM and its affiliates (some of which also pertains to PSI).

The 2010 and 2007 Orders also erred to find that the FCC does not treat site-based licenses and geographic licenses (and licensed stations) differently in many cases including with regard to AMTS, and thus, it can and in the circumstances should not grant to the site based AMTS stations and licensees, the same flexibility to provide non-common carrier services (the “private” services subject of the R&O). The 2007 and 2010 Petitions properly asserted this difference, and that it should be applied to result in the relief requested herein. Facts in the Referenced Materials demonstrate why the said relief should be granted, which includes (i) the site based AMTS stations should not be permitted to change the ICS in this actual history demonstrated since they falsely and fraudulently certified the ICS and since that is good cause to withhold any further relief, indeed, it is cause for revocation as described in 47 USC §312, (ii) to change to private radio status from ICS under the R&O, MCLM and PSI must submit a certification under oath under §20.9(b) to change from ICS CMRS to PMRS, but they cannot do that since as shown in the Referenced Materials (a) MCLM informed the Universal Service Fund Administrator (USFA), in connections with its Forms 499A, that it was operating only non-CMRS already (which is unlawful AMTS operation to begin with): indeed, that appears why MCLM has never

filed to obtain the relief the R&O provided to use at any of its alleged valid and operational stations, and (b) PSI admitted to USFA in connection with its Forms 499A that it had not filed these properly, not listing most all of most of its alleged valid AMTS stations which would only be the case if those stations were not valid CMRS stations in fact in operation.

The Referenced Materials provide, and the 2007 and 2010 Orders erred by not recognizing Petitioners assertions regarding, the failures of MCLM and PSI to comply with various FCC rules and reporting that should result in termination and licensee disqualification.

#### 4. The FCC investigation suspends rights and actions under §47 USC 309(d)

This 2011 Petition relies in part, and noted above, on the Referenced Materials which in substantial part involved pending challenges, and facts and law therein, that are now in the FCC Enforcement Bureau's ("EB") investigation of MCLM and affiliates.

That investigation is conducted on a confidential basis, where the EB announced that it would not conduct the investigation under FCC ex parte rules but would take information from MCLM and its affiliates and other sources on a confidential basis, not requiring disclosure of the obtained information to parties other than the EB, or EB and others in the FCC.

In this regard, Petitioners took the position, including by filings in their pending challenge (under 47 USC §§ 309(d) and 405) to all of the MCLM AMTS licenses obtained in Auction 61—including the License subject of the Application and this Petition to Dismiss or Deny—that they have rights to all information from said EB investigation that is relevant to their challenge. However, to date, the EB has not released said information, including in response to a FOIA request by Petitioners (that matter is now pending in a court suit against the FCC filed by Petitioners). In addition, MCLM took the position in that FOIA proceeding that the FCC may not release to Petitioners information it provided to EB in that investigation.

The investigation has effectively suspended the rights of Petitioners to file or pursue petitions that challenge the MCLM licenses (site based and geographic) under 47 USC 309(d) and 3405. This suspension is clear, since as noted above the EB has, thus far, obtained by not released including to Petitioners (and others that may seek to challenge MCLM and its licenses, and licensing actions) information of decisional importance as to the validity or invalidity of the licenses, and the qualification of disqualification of MCLM and its affiliates to own or control any FCC license, and possibly also information as to what degree MCLM license assignees and lessees are implicated in MCLM violations of FCC and US criminal law (clearly all such assignees and lessees have readily available all information in Petitioners challenges noted above (all pleadings are on ULS) and in addition they have information that they would have to have obtained by disclosures from MCLM of any matter of potential material significance to the spectrum assets involved (if they did not obtain that, their legal counsel and officers involved are liable for breach of duties, malpractice, etc.).

Courts have found that any FCC proceeding and decision based on information it has but does not release to affected parties is defective. A party cannot pursue a petition to deny a license application under 47 USC §309 or petition for reconsideration under 47 USC §405 when the FCC is keeping confidential information that is among the information essential for said petition and the issues noted in that statute.

Accordingly, Petitioners assert the right to proceed with a challenge to the Orders and seek appropriate relief including the relief noted above, after the conclusion of said investigation.

For like reasons, they assert the same with regard to other ongoing FCC and USFA proceedings regarding the site-based licenses of MCLM and PSI.

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Respectfully,

**Environmental LLC (formerly known as AMTS Consortium LLC), by**

*[Filed electronically. Signature on file.]*

Warren Havens, President

**Verde Systems LLC (formerly known as Telesaurus VPC LLC), by**

*[Filed electronically. Signature on file.]*

Warren Havens, President

**Intelligent Transportation & Monitoring Wireless LLC, by**

*[Filed electronically. Signature on file.]*

Warren Havens, President

**Telesaurus Holdings GB LLC, by**

*[Filed electronically. Signature on file.]*

Warren Havens, President

**V2G LLC, by**

*[Filed electronically. Signature on file.]*

Warren Havens, President

**Skybridge Spectrum Foundation, by**

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Warren Havens, President

**Warren Havens, an Individual**

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Date: April 4, 2011

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Petition was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

*/s/ Warren Havens*  
*[Submitted Electronically. Signature on File.]*

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Warren Havens

April 4, 2011

## Certificate of Service

I, Warren C. Havens, certify that I have, on April 4, 2011, caused to be served, by placing into the USPS mail system with first-class postage affixed (with delivery tracking) unless otherwise noted below, a copy of the Petition to to the following:<sup>2</sup>

### **1 — FCC**

By ULS filing and by email to the following FCC staff (other FCC staff may be served by email if found to be appropriately included):

Marlene H. Dortch  
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*Via ULS*  
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*Note: the following will be served if, upon final review, Petitioners find under FCC rules and practices, they are parties and should be serviced. (MCLM-Mobex earlier complained that entities not directly parties to and license application should not be seved, for example. Also, the April 1, 2011 email from FCC staff to W. Havens (signer above) and Dennis Brown for MCLM-Mobex took the position that a presentation in a restricted proceeding need only be filed directly on ULS in that matter to the parties directly involved. Petitioners have a pending request to the FCC Office of General Counsel, David Senzel (copied to Dennis Brown) to clarify that apparently policy.*

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<sup>2</sup> The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

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*/s/ [Filed Electronically. Signature on File]*

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Warren Havens